Court that if the Social Security Administration determines that a party is disabled from injuries which arouse from an incident which is also subject of State Workers Compensation Laws then the Social Security Administrations determination of disability has a binding affect on the Workers Compensation Commissions determination of disability for the same injuries.

The Appellate Court ruled that a "determination by the Social Security Administration that the plaintiff is disabled for the purposes of social security disability benefits does not preempt a workers' compensation commission from making its own independent determination concerning ability to work." The Appellate Court applied the doctrine of Collateral Estoppel/Issue Preclusion in making its decision and ignored the Petitioner's argument of a Conflict between Federal Law and State Common Law.

The law regarding preemption, specifically conflict preemption, has long been in place and is clear under the Supremacy Clause.

> A court will find that an agency intends for a regulation to preempt a state law when a regulation conflicts with a state law. . . this so-called conflict preemption, which is a kind of implied preemption occurs when it is impossible for a private party to comply with both state and federal law, and when state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of the relevant agency. . .

Wuebker v. Wilbur-Ellis Co. 418 F.3d 883 (2005) *internal quotations omitted citing Geier v. American Honda Motor Co.* 529 U.S. 861 at 884 and 873 (2000).

This theory of conflict preemption is applicable to the issues and facts of this matter. In specific, a party is injured on the job and makes a claim for State Workers Compensation Benefits. That person, due to the same exact injury, also makes a claim for Social Security Disability benefits. The Social Security Administration applying Federal Regulations in determining disability determines that party is disabled do to that injury and qualifies for benefits. The State Workers Compensation Commission, on the other hand, determines that the party is not disabled. According to the State Workers Compensation Commission, that party must seek employment. According to the Social Security Administration if that party seeks employment he/she no longer qualifies for Disability benefits. It is impossible for that party, the Petitioner in this case, to comply with both Federal and State Law, State Law now stands as an obstacle to the accomplishment and execution of the full purpose and objectives of the Social Security Administration.

The Petitioner has argued from the Workers Compensation Commission through the Connecticut Appellate Court this precise issue, the conflict of laws. While the Connecticut Courts have used other theories to defeat the Petitioner's claim/argument, the issue has still been preserved and should be heard.

CONCLUSION

For the reasons as set out in the Petitioner's Petition for Writ of Certiorari and the reasons set out in this Response the Petitioner respectfully requests that her Petition for Writ of Certiorari be granted.

Respectfully Submitted

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Not Reported in A.2d, 2006 WL 574256 (Conn.Super.)

Superior Court of Connecticut,
Judicial District of Hartford.
Aleck GLADNEY
v.
John J. RICCIO, Jr. et al.
No. CV044004997S.
Feb. 24, 2006.

O'Connell Flaherty & Attmore, Hartford, for Aleck Gladney.
Rosenbaum & Vollono Law Offices, Glastonbury, for Costello Industries Inc.
Howard Kohn Sprague & Fitzgerald, Hartford, for John J. Riccio, Jr., American Materials Corporation.

KELLER, J.

*1 The motion to compel the plaintiff to submit to an examination by the defendants' vocational rehabilitation expert, who is not a physician, is denied. The statute, General Statutes § 52-178a, and the Practice Book rule, Section 13-11, limit the court's discretion. There is no broader grant of authority by statute or at common law that would permit this court to expand the rule permitting independent evaluations by physicians to other kinds of experts. The court concludes it cannot derive authority for an examination of the plaintiff by a non-physician from *Bidoae v. Hartford Golf Club*, 91 Conn.App. 470, 881 A.2d 418 (2005), as that case narrowly focuses on broader equitable powers specifically granted to workers' compensation commissioners under the general provisions of General Statutes § 31-298. As noted in *Bidoae*, "··· [T]he commission has broader discretion over evidence than does a trial court." *Id.*, at 479, 881 A.2d 418.

Nothing in this ruling should be construed to prevent the defendants from seeking appropriate discovery relative to Dr. Cohen's proposed expert testimony and/or disclosing their own vocational rehabilitation expert prior to trial.[1]

Conn.Super.,2006.
Gladney v. Riccio
Not Reported in A.2d, 2006 WL 574256 (Conn.Super.)

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[1]Plaintiff agreed at oral argument that it would be appropriate, for example, to allow defendants' vocational rehabilitation expert to review plaintiff's testing data and test results if they are part of the basis of plaintiff's expert's opinion.